



Comptroller General
of the United States

Washington, D.C. 20548

Bluth

Decision

Matter of: Air Services Company

File: B-236353

Date: August 21, 1989

DIGEST

Where protester knew of the basis for its protest prior to filing a Freedom of Information Act request for information concerning the procurement, a protest filed more than 10 working days after the basis for protest was known is untimely.

DECISION

Air Services Company protests its rejection under invitation for bids (IFB) No. N62474-88-B-7767, issued by the Department of the Navy for heating, ventilating and air conditioning maintenance, repair and inspection services for the Naval Air Station, Moffett Field, California.

We dismiss the protest as untimely.

The Navy determined Air Services was nonresponsible for failure to provide responsible sureties as required by the IFB; that is, the Navy found Air Services' proposed individual sureties did not demonstrate sufficient assets to meet bond obligations. In addition, since there were no acceptable bidders remaining on the IFB, the Navy decided to cancel the IFB and resolicit the requirement.

The protester was notified of the agency's determination of its nonresponsibility and the decision to cancel the solicitation by a letter dated April 18, 1989. On April 24, Air Services requested certain documents under the Freedom of Information Act (FOIA), to which the agency responded on May 30. On June 29, Air Services requested the agency to rescind its decision to cancel the solicitation. On July 28, Air Services filed a protest in our Office.

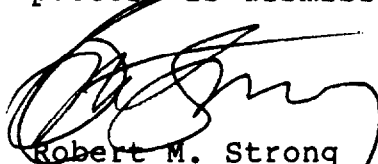
Our Bid Protest Regulations provide that to be timely a protest must be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). In general, where a

046291/139376

protest is based on information disclosed pursuant to FOIA, the protest is timely if filed within 10 working days of when the protester received the information, provided that the protester diligently pursued release of the information. Neal R. Gross and Co., Inc., B-229966, Mar. 24, 1988, 88-1 CPD ¶ 305, aff'd, B-229966.2, Apr. 18, 1988, 88-1 CPD ¶ 378.

In this case, however, although Air Services promptly submitted a FOIA request to the agency after learning of its rejection as nonresponsible, the firm's protest is not based on information disclosed pursuant to FOIA, but rather is based on information known to Air Services prior to the submission of its FOIA request. That is, the protester knew on April 18 that its bid was being rejected because its individual sureties were unacceptable, yet it failed to protest this issue until July 28, approximately 3 months later. In any case, even if Air Services' protest were based on the information released pursuant to the FOIA request, it waited 1 month before it protested to the agency and 2 months before filing a protest with our Office.

In view of the foregoing, Air Services' is untimely and the protest is dismissed.



Robert M. Strong
Associate General Counsel